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No. 84-754 (3)

In the Supreme Court of the United States

OCTOBER TERM, 1984

CITICORP, PETITIONER

v.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE FEDERAL RESPONDENT IN OPPOSITION

REX E. LEE
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

5pp

TABLE OF AUTHORITIES

Page

Cases:

Northeast Bancorp, Inc. v. *Board of Governors,* 740 F.2d 203, petition for cert. pending, No. 84-363 ..... 2, 3

Constitution and statutes:

U.S. Const. :

Art I:

§ 8, Cl. 3 (Commerce Clause) 1, 2

§ 10, Cl. 3 (Compact Clause) 1, 2

Bank Holding Company Act § 3(d), 12 U.S.C. 1842(d) 1, 2

1983 Conn. Acts 83-411 (Reg. Sess.) 2

Mass. Ann. Laws ch. 167A, § 2 (Law. Co-op. 1977 & Supp. 1984) 2

1983 R.I. Pub. Laws S. 0661 2

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Petitioner contends that several state statutes that permit the acquisition of in-state banks only by bank holding companies located in certain other states violate the Commerce and Compact Clauses of the Constitution.

1. In March 1984 the Bank of Boston Corporation, a Massachusetts bank holding company, applied to the Federal Reserve Board for permission to acquire a Rhode Island bank holding company (Pet. App. A7). Shortly afterwards, the Fleet Financial Group, Inc., another Rhode Island bank holding company, applied to the Board for permission to acquire banks in Massachusetts and Connecticut (*id.* at A19).

Section 3(d) of the Bank Holding Company Act (12 U.S.C. 1842(d)) permits the Board to approve interstate bank acquisitions only when "the acquisition of * * * a

State bank by an out-of-State bank holding company is specifically authorized by the statute laws of the State in which such bank is located, by language to that effect and not merely by implication." In making their applications, the acquiring institutions in this case pointed to state laws in effect in Massachusetts, Connecticut and Rhode Island[1] that permit the acquisition of in-state banks by bank holding companies located in the New England states (that is, in Connecticut, Massachusetts, Maine, Rhode Island, Vermont and New Hampshire). The Board concluded that these statutes "expressly authorize[], within the meaning of section 3(d) of the Act" (Pet. App. A20-A21), the acquisitions at issue here. See also *id.* at A14. Relying on *Northeast Bancorp, Inc.* v. *Board of Governors*, 740 F.2d 203 (2d Cir. 1984), cert. pending, No. 84-363, the Board also rejected Commerce and Compact Clause challenges to the state statutes (Pet. App. A15, A22). It therefore approved the acquisitions. The court of appeals affirmed the Board's orders, also on the basis of *Northeast Bancorp* (Pet. App. A1-A3, A4-A6).[2]

2. Petitioners contend that the regionally-restrictive aspects of the Massachusetts, Connecticut and Rhode Island statutes do not satisfy Section 3(d) of the Bank Holding Company Act and are inconsistent with the Commerce and Compact Clauses. These arguments are in all relevant respects identical to the issues presented by the pending petition for a writ of certiorari in *Northeast Bancorp*. The outcome here therefore should be controlled by

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[1]The statutes are Mass. Ann. Laws ch. 167A, § 2 (Law. Co-op. 1977 & Supp. 1984); 1983 Conn. Acts 83-411; and 1983 R.I. Pub. Laws S.0661.

[2]The parties to the appeal stipulated that the Board orders would be affirmed without briefing or argument, with the court of appeals' judgments subject to a petition to this Court for a writ of certiorari (Pet. 8). This stipulation was embodied in the court of appeals' orders (Pet. App. A1-A3, A4-A6).

the disposition of the *Northeast Bancorp* petition. For the reasons stated in our brief in opposition in *Northeast Bancorp*, we believe that both petitions should be denied. If the Court instead grants the petition in *Northeast Bancorp*, it would be appropriate for it to defer action on this petition until *Northeast Bancorp* is resolved on the merits.

Respectfully submitted.

REX E. LEE
Solicitor General

DECEMBER 1984

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